

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCOS GAMA,

Plaintiff,

v.

BOARD OF TRUSTEES OF CALIFORNIA
STATE UNIVERSITY, et al.,

Defendants.

Case No. 18-cv-02552-VC

ORDER RE MOTION TO DISMISS

Re: Dkt. No. 13

1. Marcos Gama does not allege a plausible claim for gender discrimination under Title IX against any of the defendants. No facts in the complaint raise a plausible inference that Gama was treated differently because of his gender during the investigation of sexual harassment allegations against him. *See Morales-Cruz v. Univ. of Puerto Rico*, 676 F.3d 220, 224 (1st Cir. 2012). Because Title IX does not make individuals liable for employment discrimination, Gama's claim against Luoluo Hong is dismissed with prejudice. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009). Although it seems highly unlikely Gama will ever be able to state a Title IX claim against the Board of Trustees of California State University, in an abundance of caution that claim is dismissed with leave to amend.

2. Section 1983 claims for damages against state officials in their official capacity are not legally cognizable. *See Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982). Thus, the claim against Hong in her official capacity is dismissed with prejudice.

3. Nor has Gama alleged a plausible section 1983 claim that Hong, in her individual capacity, deprived him of his due process or First Amendment rights. *See Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1182-83 (9th Cir. 2007); *see also Ashcroft v. Iqbal*,

556 U.S. 662, 676 (2009) ("a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution"). Gama has not alleged any facts that suggest Hong was involved in the investigation of the sexual harassment allegations, less a single vague statement that Hong and Mary Ann Begley "sustain[ed] the complaint against [Gama] and impose[d] disproportionate discipline." Dkt. No. 1, Complaint at ¶ 19. Dismissal is with leave to amend.


4. Gama's contract claims are dismissed because Gama has not alleged any facts to suggest that California State's policies are contracts; even if the policies were contracts, Gama has not alleged facts that raise a plausible inference that he was a party or intended beneficiary of those contracts.

5. This leaves one claim under section 1983 against Begley in her individual capacity, but she has not yet been served. This case was removed on April 30, 2018. Thus, Gama has until July 30, 2018 to properly serve Begley. 28 U.S.C. § 1448. If Begley is not served by this time, absent a showing by Gama that good cause exists to extend the deadline for service of the complaint, the remaining claim against Begley will be dismissed without prejudice. Fed. R. Civ. P. 4(m).

6. Any amended complaint must be filed within 21 days of this order. Otherwise dismissal of all claims addressed in this order will be with prejudice.

IT IS SO ORDERED.

Dated: July 6, 2018



VINCE CHHABRIA
United States District Judge